

FCC MAIL SECTION

Federal Communications Commission

DA 95-1492

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-109

In the Matter of

Amendment of Section 73.202(b) RM-8665
Table of Allotments
FM Broadcast Stations
(Coolidge and Gilbert,
Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 30, 1995; Released: July 17, 1995

Comment Date: September 7, 1995

Reply Comment Date: September 22, 1995

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making and a Petition for Reconsideration and Reinstatement Nunc Pro Tunc, filed by Rainbow Broadcasting, Inc. ("Petitioner"), licensee of Station KAZR(FM),¹ Coolidge, Arizona proposing the substitution of Channel 280C2 for Channel 280A and the reallocation of Channel 280C2 to Gilbert, Arizona, and the modification of Station KAZR(FM)'s license to specify Gilbert, Arizona, as its community of license.²

2. Petitioner states that its proposal complies with the requirements set forth in §1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License*, 4 FCC Rcd 4870(1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to Gilbert is mutually exclusive with the existing allotment of Channel 280A at Coolidge. Petitioner further states that the public interest would be served by the reallocation, since it would provide Gilbert (population 45,000) with its

first local aural transmission service while Coolidge (population 6,934) would retain local aural transmission service through full-time Station KCKY(AM). In further support of its request, petitioner states that Gilbert is a recognized city in the state of Arizona, operates under the Mayor-City Manager form of municipal government and has its own police, fire and city maintenance/management. Petitioner claims that the reallocation of KAZR(FM) as a Class C2 facility at Gilbert will provide service to 1,418,890 persons as compared to 36,147 persons at Coolidge's currently licensed facility. There will be a net population gain of 1,382,743 within the 60 dBu service contour.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration, since it would not deprive Coolidge of its only local aural transmission service, and its use is mutually exclusive with that of Gilbert. Since Gilbert is located in the Phoenix Urbanized Area, we question whether Gilbert should be credited with all of the aural transmission services licensed in the Phoenix Urbanized Area. Petitioner is requested to submit information sufficient to show that Gilbert is deserving of such a preference using the Commission's three factors enumerated in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) and *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).

4. We also acknowledge petitioner's claim that its proposal will provide service to a larger population, and we must take into account the fact that existing service will be deleted from a community. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See *Modifications, supra*, 5 FCC Rcd at 7097 (1990); see also, *Report and Order (Eatonton and Sandy Springs, Georgia; and Anniston and Lineville, Alabama)*, 6 FCC Rcd 6580 (1991), *app. for rev. pend.* Since we are concerned with the loss of service to the community of Coolidge, we request petitioner to submit any additional information as the overall public interest benefits that would be advanced from grant of this proposal. We also request that the petitioner provide information showing the areas and populations which will lose existing service if Station KAZR(FM) is upgraded to Channel 280C2 and reallocated to Gilbert. The study should also indicate the number of reception services which are now available within the gain and loss areas.³

¹ The petition was initially filed by FM 103 Broadcasting, Inc., former licensee of Station KAZR(FM). Rainbow consummated the assignment of license on April 14, 1994 (File No. BALH-940113GJ).

² The petition for rule making was originally dismissed by letter because Gilbert was located within the Phoenix, Arizona, Urbanized Area and we were unable to determine whether the proposal would result in a preferential arrangement of allotments. Petitioner has now added new information in an attempt to cure the deficiency. Procedurally, the petition for reconsideration is defective because the new material submitted by petitioner did not fall within any of the exceptions listed in §1.429 of the Commission's Rules, which set the rules for filing petition for reconsideration in allotment proceedings. Even though

the petition for reconsideration could be properly denied under §1.429, petitioner could and we are certain would, file a new petition for rule making with the new information. Therefore, in order to streamline and expedite allotment processing in this case we will consider the petition for reconsideration as a new petition for rule making.

³ Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour should be considered, assuming maximum facilities for the class of station, except Class C. For Class C stations, the licensed facilities or the minimum Class C facilities, whichever is greater, should be

5. We believe petitioner's proposal warrants consideration. Channel 280C2 at Coolidge could be reallocated to Gilbert, Arizona since it may provide the community of Gilbert with its first local aural transmission service. A staff engineering analysis has determined that Channel 280C2 can be allotted to Gilbert in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 kilometers (17.9 miles) east of the community.⁴ In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 280C2 at Gilbert.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Coolidge	280A	-
Gilbert	-	280C2

7. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 7, 1995**, and reply comments on or before **September 22, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant as follows:

Barry A. Friedman
Semmes, Brown & Semmes
1025 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 776-1660. For purposes of this restricted notice and com-

ment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

considered. The area of reception for full-time AM stations is defined according to whether it is a Class A AM station or another class of full-time AM station. For a Class A station, called a clear channel station, the reception area is defined by a station's 0.5mV/m groundwave contour, based on its licensed facilities. For allocation purposes, all other classes of full-time AM stations, reception service is defined as that service received within a station's *nighttime* interference-free contour. For purposes of determining the availability of aural services in the

areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well served. Accordingly, within a given reception area, any count of radio services beyond five is unnecessary.

⁴ The coordinates for this allotment are North Latitude 33-22-37 and West Longitude 111-28-55.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.